World court

Background Paper

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THE WORLD COURT

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THE WORLD COURT*

ORGANIZATION OF THE COURT

The World Court(1) is one of the six main organs of the United Nations.(2) Established in 1946(3) by the *Statute of the International Court of Justice* (the ICJ Statute), the Court is situated at The Hague, in the Netherlands. The bench consists of fifteen judges elected by an absolute majority vote in both the General Assembly and the Security Council, although it may sit with fewer than fifteen judges. The election process for World Court judges is highly political. Candidates are nominated by national panels of jurists, and those selected for nomination must be qualified to hold the highest judicial offices in their own countries or have recognized competence in the field of international law. Judges hold their positions for nine years but may be re-elected for additional terms of service. A president and vice-president of the Court are chosen by the judges from among its fifteen members, all of whom hold all the privileges of diplomats.

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* This paper is based on work originally done by Jack Silverstone.

(1) More formally it is called the International Court of Justice or ICJ.

(2) The other five are the General Assembly, the Security Council, the Secretariat, the Economic and Social Council and the Trusteeship Council.

(3) The present World Court is the successor to the Permanent Court of International Justice (PCIJ) established in 1920 under League of Nations auspices. The ICJ has jurisdiction to hear disputes that treaties formerly directed to the now defunct PCIJ.

In an attempt to ensure an impartial and representative bench, no two judges may be nationals of the same State. When a case is presented to the Court for adjudication, each side, unless the panel of judges already includes a national of the State in question, chooses an outside judge to sit with the panel on terms of total equality. This mechanism offsets the World Court's rule that judges are not automatically disqualified from hearing a case involving their own State, though they may remove themselves from a particular case. This differs from the common law and civil law rule that judges with an interest in a case that might affect their impartiality normally retire from the adjudication. It also recognizes the overt political nature of many decisions the International Court of Justice is called upon to render.

The Court avoids conflicts of interest by prohibiting its judges from holding administrative, political or other professional positions during their tenure.

COMPETENCE OF THE COURT

Only States may be parties to cases heard by the World Court. Hence, State-owned agencies with a claim against a sovereign State must have any action taken on their behalf by their government. For example, if a State-owned corporation's offshore oil rig is damaged through the negligent operation of the warship of another State, only the owner State, and not the oil exploration entity, may take action in the World Court. Similarly, the defendant in any such litigation must also be a State; thus if the oil rig was damaged by a vessel owned by a shipping company, that company could not, according the ICJ Statute, be brought before the Court. Non-governmental organizations, corporations and individuals are also precluded from using the World Court as a forum for dispute settlement, although they may ask States to advance their claim against another State, including their own.

While international organizations may not themselves be parties to a case presented to the Court, the ICJ can request documentation and other information from them. The Court must also send copies of all written proceedings to international organizations whose defining legal instruments or subsequent conventions are the subject of a case before it.

The jurisdiction of the Court extends to all legal disputes relating to: the interpretation of a treaty; any question of international law; the existence of facts that would constitute a breach of international law; and the nature and extent of reparations to be made for a breach of an international legal obligation. In reaching judgment, the Court applies legal principles as evidenced in international conventions, international custom, general principles of law recognized by civilized nations and, as a subsidiary means, learned legal writings. The World Court is not bound by precedent and, if the Parties agree, it can decide a case on equitable rather than legal principles.

The rules that define the Court's powers have been intensely criticized as rendering the tribunal largely ineffective in a great many international disputes. Criticism centres upon the Court's inability to enforce its judgments as well as upon its lack of compulsory jurisdiction without some form of consent by the affected State Parties. Compulsory jurisdiction would, however, infringe upon State sovereignty, which, as Article 2(1) of the *Charter of the United Nations* implies, is a fundamental tenet of international law and relations.

The International Court of Justice can become seized of a case in one of three ways. First, the parties may refer a case to it by special agreement. In such instances, two or more States agree to refer a particular matter to the Court for adjudication. A second mode is by way of a compromissory clause in a bilateral or multilateral treaty (including the United Nations Charter), a device that has its origin in international arbitration practice. The treaty containing the clause may provide for a reference of a given dispute to the Court, or it may regulate some other topic and contain a compromissory jurisdiction clause. The third method for the Court to obtain jurisdiction is conferred by Article 36(2) of the ICJ Statute. This section permits a State Party to declare that it recognizes the jurisdiction of the Court in international law matters as compulsory *ipso facto* and **without special agreement**, on the basis of reciprocity with other States. Thus, if State A has made such a declaration and is in a dispute with State B, which has also done so, as soon as it is notified of the dispute, the Court is seized of the matter and has valid jurisdiction.

Canada has acceded to *ipso facto* compulsory jurisdiction of the ICJ with four reservations. The first is that Canada declines the Court's jurisdiction where Canada and other State Parties to a dispute have agreed to have recourse to some other method of peaceful

settlement. The second is that disputes with other Commonwealth nations are to be resolved in a manner agreed upon by that body. The third exemption applies to matters, such as taxation and immigration, which by international law fall exclusively within the jurisdiction of Canada. The final reservation deals with the control of living resources and the marine environment in the sea off Canada's coasts.(4) This removes Canadian legislation concerning fisheries and pollution control off our coasts from the sphere of international litigation before the Court.(5)

PROCEDURE BEFORE THE WORLD COURT

The World Court hears disputes in either French or English, taking both written and oral evidence, usually in a public forum. The Court may request information (in an "inquisition" fashion) from the Parties. In the absence of one Party, the Court may, if it is satisfied as to the facts and law, still pronounce judgment. The ICJ Statute allows the Court to order provisional measures necessary to preserve the rights of either Party pending final disposition. This is similar to the powers of most domestic tribunals. Such a provisional measure might be to order a State Party to cease fishing stocks off the other State Party's coast until both Parties' respective rights under international law had been determined. Provisional measures could be needed to prevent serious stock depletion and irreparable economic harm to the coastal State before a final judgment.

An interesting invocation of provisional measures in the World Court was in response to the plea by the United States during the hostage-taking in the American Embassy in

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(4) The exact terms of the reservation read as follows: "... disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management, or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada."

(5) In 1970, Canada implemented the *Arctic Waters Pollution Prevention Act*, which purported to extend Canadian maritime jurisdiction in the Arctic. Although vigorously opposed by other nations, this legislation could not be challenged before the World Court because of this reservation.

Teheran. The Court granted the American request for the release of the hostages and an assurance of their safety until the matter could be resolved. Rather than being a triumph of reason and law, however, the proceedings highlighted deficiencies in the present operations of the judicial body. Iran declined to recognize the Court's authority in the matter and refused to attend the hearing. Though the Court produced a unanimous judgment, this was unenforceable and did not secure the hostages' release. Thus, the World Court was vaulted into international prominence, but was seen as a weak and ineffectual organ.

Many claim that the World Court is not, and cannot be, a suitable forum for the resolution of highly political disputes. In such instances the possible detrimental outcome to one or the other of the Parties might be so negative as to make the alternative of prolonged confrontation comparatively attractive. This deficiency, combined with the fact that only States can be Parties to an ICJ proceeding, has rendered the body impotent with respect to many contentious issues. The Court's incapacity to deal with a complaint filed by an individual or an organization over an infringement of perceived rights under the *Universal Declaration of Human Rights* is viewed by some as a regrettable example of its failure to develop in pace with the rest of the body of international law. It could be argued that though it was initially intended to be a dispute-resolution forum for disputes among States, the Court could now be a valuable tool for the international protection of human rights.

ADVISORY OPINIONS

Though the ICJ is not very effective in inter-State conflict resolution, it is fulfilling a useful role as an advisory body in certain ambiguous areas of international law. The Court may issue an advisory opinion on any legal question put before it a non-litigious setting. This opinion can clarify the rights, or the perceived rights of interested Parties, and can contribute to the overall development of public international law.

Besides State Parties, requests for advisory opinions may come from any of the principal organs of the U.N. or its specialized agencies. In such consultations, the prestige of

the Court is not diminished if it renders decisions that are unenforceable, for its legal determination in these circumstances is primarily just a catalyst for a political settlement.

Unfortunately, the World Court is only infrequently asked for advisory opinions. While it is perhaps too much to ask States to place what they may feel are vital national interests before an international tribunal, the Court could and should be requested more often to give advice on problems encountered by international bodies. The Court could play a relevant role in international intercourse and in the development of international legal precepts, but not as long as it is confined primarily to contentious cases where it is least productive. Through its advisory function, the International Court of Justice could increase its importance in the international legal process.

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